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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Douglas L. Michalsky  
Phillip E. Carr  
Edwin L. Hankinson

Attorney Docket: CMI-470  
(2009.009900)

S/N: 09/973,580

Group: 2856

Filed: 10/09/01


For: Implantable Osteogenic Material

Examiner: Jay L. Politzer

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8	
DATE OF DEPOSIT:	October 20, 2003
I hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage as "FIRST CLASS MAIL" addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
 Signature	

**ELECTION AND RESPONSE UNDER 35 U.S.C. § 121  
TO OFFICE ACTION DATED JUNE 19, 2003**

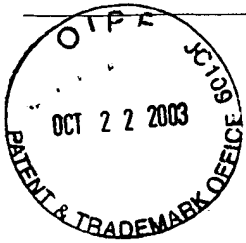
This paper is filed in response to the Office Action mailed June 19, 2003, and having a one month shortened statutory response period. Applicants enclose a three month extension of time, extending the response period to October 20, 2003. However, **Applicant requests that the Applicant not be charged with any fee for extension of time**, because the species election imposed by the Examiner is improvidently made for reasons set forth hereinbelow. Accordingly, Applicant requests that a new Office Action be sent with a proper articulation of the species election requirement imposed by the Examiner. It is believed that no additional fee is due. However, please charge any such fee to Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/2009.009900.

The Examiner has issued a restriction requirement under 35 U.S.C. § 121 between Group I, directed to a "method and apparatus for testing prosthetic heart valves," and an "apparatus for

testing heart valves, classified in class 623, subclass 913. Applicant hereby elects Group I, claims 1-36 and 43-50 for prosecution, with traverse, on the grounds that the claims of Group II (i.e., claims 37-42) present no additional search burden, and the claims are sufficiently related to the invention of the claims of Group I such that examination should proceed together.

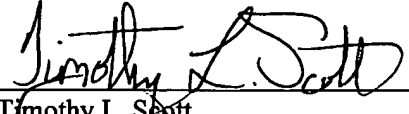
The Examiner has also issued an election requirement between the species of claims 1-13 (hereinafter referred to as species A), claims 14-25 (hereinafter referred to as species B), and claims 26-36 (hereinafter referred to as species C). Applicant hereby elects the species of claims 1-13, with traverse. Applicant respectfully submits that the election requirement is improper **because the Examiner has failed to provide any basis upon which the alleged species are distinct** one from another, and Applicant can discern no reasonable basis for the alleged species groupings. More specifically, Claim 1 is a generic independent claim over both independent claim 14 (the only independent claim in species B) and independent claim 26 (the only independent claim in species C).

Because the Examiner has provided no basis or description of why the species requirement is imposed, **Applicant has not been provided with a fair opportunity to assent or traverse the species election**, and therefore requests that such basis be provided to the Applicant in a new Office Action without imposition of a late fee.



10/18/03  
Date

Respectfully submitted,

  
\_\_\_\_\_  
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